

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LUTHERAN MEDICAL CENTER,

Plaintiff,

-against-

MEMORANDUM & ORDER

13-CV-7325-FB-JO

SYLVIA MATHEWS BURWELL, in her
official capacity as Secretary of the United
States Department of Health and Human
Services,

Defendant.
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Appearances:

For the Plaintiff:

ROY W. BREITENBACH
COURTNEY A. ROGERS
Garfunkel Wild, P.C.
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Great Neck, New York 11021

For the Defendant:

ROBERT L. CAPERS
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

By: DANA A. OLDS
Assistant United States Attorney

BLOCK, Senior District Judge:

Lutheran Medical Center (“Hospital”), a not-for-profit, general hospital, brings this action against Sylvia Mathews Burwell, in her capacity as Secretary of the Department of Health and Humans Services (“Secretary”), to challenge the decision of the Provider Reimbursement Review Board (“PRRB”) that it did not have jurisdiction

to consider certain issues. Both parties move for judgments on the pleadings. Involving the same parties who appeared before and the same issues resolved by the Court in *Lutheran Med. Ctr. v. Burwell*, Nos. 14-cv-731 (FB) (RML), 14-cv-732 (FB) (RML), 2016 WL 3882896 (E.D.N.Y. July 13, 2016) (“*Lutheran I & II*”), the parties do not dispute the veracity of this matter’s singularly dispositive fact: Lutheran failed to comply with the PRRB’s strict deadline for filing its final position paper, *see* Pl.’s Mem. Supp. MSJ at 10; Def.’s Mem. Supp. MSJ at 7–8.¹

Accordingly, for the reasons stated in *Lutheran*, 2016 WL 3882896, at *3–4, the Hospital’s motion for summary judgment is DENIED, the Secretary’s cross-motion for summary judgment or, in the alternative, for judgment on the pleadings is GRANTED, and the Hospital’s complaint is DISMISSED.

SO ORDERED

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
February 2, 2017

¹ Although the complaint in this case was filed before Lutheran’s pleadings in *Lutheran I & II*, the summary judgment motions in *Lutheran I & II* were fully briefed before the parties moved for judgment on the pleadings here. Neither party has filed anything in this matter since submitting its dispositive motion on April 20, 2016.